

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

11 SEP 14 PM 3:27
STENOGRAPHER
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

JOSEPH T. ZURBUCH)
)
Plaintiff,)
)
vs.)
)
ST. JOSEPH COUNTY)
)
Defendant.)

CASE NO. 3:11CV 371

COMPLAINT

I. Preliminary Statement

1. This action seeks declaratory, injunctive and equitable relief, together with liquidated damages, costs and attorney's fees under the Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA) for the wrongful termination of Plaintiff Joseph Zurbuch ("Zurbuch") by Defendant St. Joseph County ("St. Joseph County").

11. Jurisdiction

2. This action arises under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq., as amended, and the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 et seq.

3. Jurisdiction is invoked pursuant to 28 U.S.C. § 1331 and 1343(4) and 42 U.S.C. § 12101 et seq. and 29 U.S.C. § 626 (C)(1). A Right-to-Sue letter was issued on June 15, 2011, by the Equal Employment Opportunity Commission (EEOC), based upon a charge affidavit timely filed with the EEOC.

4. Declaratory, injunctive, equitable relief and liquidated damages are sought pursuant to 28 U.S.C. § 2201, 2202, 42 U.S.C. 12101 et seq. and 29 U.S.C. § 626 (b).

5. Costs and attorney's fees may be awarded pursuant to 42 U.S.C. 12101 et seq., F.R.C.P. 54 and 29 U.S.C. § 626 (b).

III. Venue

6. This action properly lies in the Northern District of Indiana, South Bend Division, pursuant to 29 U.S.C. § 1391(b), because Plaintiff's claims arose in this judicial district and the alleged unlawful employment practices were committed in this judicial district.

IV. Parties

7. Plaintiff Joseph T. Zurbuch is a sixty-two (62) year old male who is currently and was at all times relevant a citizen and resident of the United States in the Northern District of Indiana.

8. Defendant St. Joseph County is an employer, engaging in an industry affecting commerce, employs more than fifteen (15) regular employees, and is located in St. Joseph County.

COUNT I

V. Facts and Claim

9. Zurbuch was employed as an Equipment Operator II for St. Joseph County in its Highway Department from June 5, 1999 until about May 21, 2010.

10. His duties as an employee of St. Joseph County included snow-plowing roads, mowing grass on country roads and vacant lots, laying asphalt on roads, and grading roads.

11. Zurbuch has a hearing disability in both of his ears; he only has 40% hearing capability in his left ear and 60% hearing capability in his right ear.

12. Zurbuch has high blood pressure, which is treated with medications, including diuretics.

13. Zurbuch also has damage to the left frontal lobe of his brain arising from a fall at work in 2007.

14. Zurbuch's above medical impairments meet the definitions of qualified disabilities under the ADA.

15. St. Joseph County was employed Zurbuch as of May 2010 on a full-time basis of at least forty (40) hours per week at the rate \$13.48 per hour.

16. On or about May 20, 2010, Zurbuch was placed on family medical leave by St. Joseph County because of alleged safety concerns arising from the above medical conditions.

17. St. Joseph County subsequently placed Zurbuch, in September of 2010, on 100% disability leave; he grosses \$1000.00 per month, prior to deduction for taxes, from long-term disability benefits.

18. Prior to being placed on medical leave in May 2010, Zurbuch requested on several occasions that the company make accommodations with respect to his medical conditions, but his supervisor refused.

19. St. Joseph County's stated reasons for Zurbuch's placement on medical leave and long-term disability were pre-textual in nature and were, in reality, based on his disabilities.

20. St. Joseph County's placement of Zurbuch on medical leave and its refusal to provide reasonable accommodations violated the Americans with Disabilities Act (ADA) 42 U.S.C. § 12101 et seq., as amended.

21. As a proximate result of St. Joseph County's discriminatory acts, Zurbuch suffered

lost wages, together with fringe benefits.

22. Zurbuch has also suffered emotional distress, humiliation, embarrassment and mental anguish.

23. Zurbuch is entitled to lost wages, liquidated damages, costs, and attorney fees under the ADA.

24. Zurbuch filed a timely Complaint with the EEOC, and was mailed a Right-To-Sue letter dated June 15, 2011. These documents are attached to this Complaint as Exhibits A and B, respectively.

WHEREFORE, Plaintiff Joseph Zurbuch respectfully requests the following relief:

1. Enter judgment declaring that Defendant's acts, policies, practices and procedures complained of herein violated Plaintiff's rights as secured by the Americans with Disabilities Act.

2. Order Defendant to make whole Plaintiff who has been adversely affected by the policies and practices described herein by providing appropriate back pay, front pay, and reimbursement for retirement benefits, Social Security, experience, training opportunities and other fringe benefits in an amount to be shown at trial and other affirmative relief; and

3. Retain jurisdiction over this action to assure full compliance with the orders of the Court and with applicable law and require Defendant to file such reports as the Court deems necessary to evaluate compliance;

4. Award Plaintiff his attorney fees, costs and disbursements;

5. Award Plaintiff such additional relief as the Court deems just and proper; and

6. Grant Plaintiff a jury upon these issues triable by jury.

COUNT II

25. Plaintiff Zubuch incorporates, as if recited herein, Paragraphs 9-18 of Count I of his Complaint.

26. St. Joseph County's stated reasons for Zurbuch's placement on medical leave and long-term disability were pre-textual in nature and were, in reality, based on his age.

27. St. Joseph County's placement of Zurbuch on medical leave violated the Age Discrimination Employment Act (ADEA).

28. As a proximate result of St. Joseph County's discriminatory acts, Zurbuch suffered lost wages, together with fringe benefits.

29. Zurbuch has also suffered emotional distress, humiliation, embarrassment and mental anguish.

30. Zurbuch is entitled to lost wages, liquidated damages, costs, and attorney fees under the ADEA.

31. Zurbuch filed a timely Complaint with the EEOC, and was mailed a Right-To-Sue letter dated June 15, 2011. These documents are attached to this Complaint as Exhibits A and B, respectively.

WHEREFORE, Plaintiff Joseph Zurbuch respectfully requests the following relief:

1. Enter judgment declaring that Defendant's acts, policies, practices and procedures complained of herein violated Plaintiff's rights as secured by the Age Discrimination Employment Act .

2. Order Defendant to make whole Plaintiff who has been adversely affected by the

policies and practices described herein by providing appropriate back pay, front pay, and reimbursement for retirement benefits, Social Security, experience, training opportunities and other fringe benefits in an amount to be shown at trial and other affirmative relief; and

3. Retain jurisdiction over this action to assure full compliance with the orders of the Court and with applicable law and require Defendant to file such reports as the Court deems necessary to evaluate compliance;

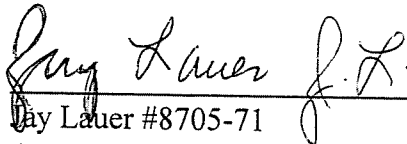
4. Award Plaintiff liquidated damages pursuant to the ADEA;

5. Award Plaintiff his attorney fees, costs and disbursements;

6. Award Plaintiff such additional relief as the Court deems just and proper; and

7. Grant Plaintiff a jury upon these issues triable by jury.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jay Lauer J.L.", is written over a horizontal line.

Jay Lauer #8705-71

Attorney at Law

105 East Jefferson Boulevard

South Bend, IN 46601

(574) 288-5562

USDC CHARGE OF DISCRIMINATION

document 1, filed 09/14/11 page 7 of 8

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

☒ FEPA

24M-2010-00277

☒ EEOC

24M-2010-00277

South Bend Human Rights Commission

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Mr. Joseph T. Zurbuch

Home Phone (Incl. Area Code)

(574) 271-4803

Date of Birth

11-03-1948

Street Address

17572 Parker Avenue, South Bend, IN 46635

City, State and ZIP Code

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

ST. JOSEPH COUNTY HIGHWAY DEPARTMENT

No. Employees, Members

15 - 100

Phone No. (Include Area Code)

(574) 235-7800

Street Address

4141 Lathrop Street, South Bend, IN 46628

City, State and ZIP Code

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE

☐ COLOR

☐ SEX

☐ RELIGION

☐ NATIONAL ORIGIN

☐ RETALIATION

☒ AGE

☒ DISABILITY

☐ GENETIC INFORMATION

☐ OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

01-01-2010

05-20-2010

☒ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I am a disabled 61-year-old male employed by the St. Joseph County Highway Department since June 5, 1999. Since January 2010, Superintendent Roger Mathia has created and subjected me to a hostile work environment due to my record of a disability and due to my age. I was informed that I must submit to fit for duty due to a work related injury in January 2007. I believe I have been discriminated against on the basis of my Age, which is in violation of the Age Discrimination in Employment Act, as amended; and Disability, which is in violation of the American with Disabilities Act, as amended.

Maria Diana Moya, Notary Public
A Resident of St. Joseph County, IN
My Commission Expires: 07-26-2013

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

Maria Diana Moya

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

Joseph T. Zurbuch
SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

Jul 12, 2010

Date

Charging Party Signature

Exhibit B

DISMISSAL AND NOTICE OF RIGHTS

To: **Joseph T. Zurbuch**
 17572 Parker Avenue
 South Bend, IN 46635

From: **Indianapolis District Office**
 101 West Ohio St
 Suite 1900
 Indianapolis, IN 46204

☐

On behalf of person(s) aggrieved whose identity is
 CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

24M-2010-00277

Michelle D. Ware,
 Enforcement Supervisor

(317) 226-5161

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐

Other (briefly state)

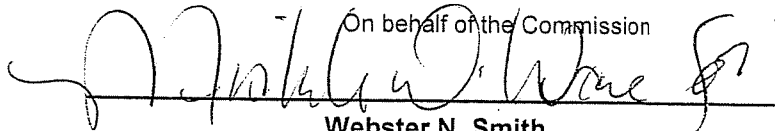
- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

Enclosures(s)

On behalf of the Commission


Webster N. Smith,
 District Director

JUN 15 2011

(Date Mailed)

cc:

St. Joseph County Highway Department
 c/o Peter J. Agostino, Attorney
 ANDERSON AGOSTINO & KELLER, P. C.
 131 South Taylor
 South Bend, IN 46601